



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION I**  
**ONE CONGRESS STREET SUITE 1100**  
**BOSTON, MASSACHUSETTS 02114-2023**

March 14, 2006

Glenn Haas  
Acting Assistant Commissioner  
Bureau of Resource Protection  
Department of Environmental Protection  
One Winter Street, 2<sup>nd</sup> Floor  
Boston, MA 02108

Re: Approval of Charles River and Alewife Brook/Mystic River Variances

Dear Mr. Haas:

I am writing to inform you that by this letter EPA approves variances for the Charles River and Alewife Brook/Mystic River through 2020, based on the understanding that MassDEP will periodically reissue the variances through this time period after holding public hearings for public comments and determining that there is no substantial change in conditions. Each reissued variance will include the condition that the MWRA must comply with relevant orders of the United States District Court for the District of Massachusetts, Civil Action Nos. 85-0489-MA and 83-1614-MA, and achieve the levels of control established in the LTCP.

On September 15, 2005 the Environmental Protection Agency ("EPA"), Region 1, approved the Massachusetts Department of Environmental Protection's ("MassDEP") August 22, 2005 submittal of extension of variances for CSO discharges by the Massachusetts Water Resources Authority ("MWRA") in the Lower Charles River and Alewife Brook/Mystic watersheds. These variance extensions were issued by MassDEP, after public review and comment, in the Fall of 2004 for terms not to exceed three years. In the September 15, 2005 approval, EPA agreed with MassDEP that it is not feasible to fully attain Class B water quality standards within the three-year terms of these variances.

The WQS variances are for combined sewer overflow (CSO) discharges by the Massachusetts Water Resource Authority (MWRA) and the Cities of Somerville and Cambridge to the Alewife Brook and Upper Mystic River, and for CSO discharges by the MWRA, the City of Cambridge, and the Boston Water and Sewer Commission to the Lower Charles River. Under state law, the variances were issued on September 1, 2004 and October 1, 2004, respectively, for the Alewife Brook and Mystic River and the Lower Charles River, for terms not to exceed three years. On



August 11, 2005, MassDEP's Acting General Counsel certified the variances as having been duly adopted pursuant to state law.

In accordance with the variances, combined sewer overflow discharges from permitted outfalls are not required to meet the Massachusetts Class B bacteria criteria during events when flow in the collection system exceeds the collection system conveyance capacity as a result of precipitation or snow melt. The variances are conditioned upon continued implementation of CSO long term control measures consistent with the MWRA's 1997 Final CSO Facilities Plan, as amended for the Alewife Brook and Mystic River and the Lower Charles River (the LTCP), and do not in any way delay the pace of implementation that would occur without the variances. Rather, the projects that are to be implemented during the term of these variances will improve water quality in the Alewife Brook/Mystic River and the Lower Charles River Basin.

Following EPA's previous approval, there have been discussions between MassDEP and EPA about how MWRA has satisfied the requirements for variances through the year 2020. Because the record indicates that the conditions supporting the 2004 variances will remain in place through 2020, EPA approves the variances.

The MWRA has completed numerous analyses since the late 1980s evaluating alternatives for eliminating combined overflows from the collection system tributary to the Deer Island Treatment Plant. Among these are the 1997 Combined Sewer Overflow Facilities Plan and Environmental Impact Report, the 2001 Notice of Project Change for the Long term Control Plan for Alewife Brook, and the 2004 Cottage Farm CSO Facility Assessment Report. Based on the analyses completed by the MWRA, MassDEP determined that proceeding at this time with controls necessary for full attainment of Class B water quality standards would result in substantial and widespread economic and social impact as those terms are used in 40 C.F.R. § 131.10(g)(6). EPA agrees that it is not feasible to fully attain Class B water quality standards for primary contact recreation prior to 2020.

As explained in its March 13, 2006 letter, MassDEP intends to reissue the variances in increments of no more than three years through 2020. Consistent with 40 C.F.R. § 131.20(a), at the end of each variance, MassDEP will make a draft determination on whether there is any reason not to reissue the variance for the receiving waters. MassDEP's draft determination will be subject to public comment and a public hearing, and provide notice and an opportunity to comment by the MEPA office within EOEA. Based on its review of public comments and absent a substantial change in conditions, MassDEP will reissue the variances, as applied to the MWRA only, provided that the MWRA is in compliance with relevant orders of the United States District Court for the District of Massachusetts, Civil Action Nos. 85-0489-MA and 83-1614-MA, and achieving the level of CSO controls required in the LTCP.

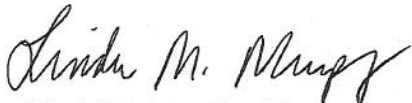
EPA has a record based on information provided by MassDEP that it is not feasible to fully attain the Class B water quality standards for primary contact recreation prior to 2020. Further, it is important for EPA to take action on the variance extensions through 2020 at this time in order to

provide certainty to the MWRA as it implements its Long-Term Control Plan and undertakes capital improvement planning. Therefore, in accordance with Section 303(c)(2) of the Clean Water Act and 40 C.F.R. Part 131, I hereby approve the MassDEP's resubmitted variances, including reissuance of the variances in increments of no more than three years with respect to the MWRA through the year 2020, subject to the following conditions established by the MassDEP:

- 1) The variances will be reviewed to determine if there is new information at least once every three years in accordance with 40 C.F.R. Sec. 131.20;
- 2) The variances will require the MWRA to comply with the Court Order and CSO Long-Term Control Plan referenced above; and
- 3) If CSO discharges to the Charles River, Alewife Brook or Mystic River cause impacts of a different character or outside of the range of impacts that can be expected based on available information, the conditions of the variance may need to be adjusted.

We look forward to continued cooperation with MassDEP on exercising our shared responsibility of implementing the water quality standards requirements under the Clean Water Act. If you have any questions about this approval, please contact Bill Beckwith (617-918-1544) or Michael Wagner (617-918-1735).

Sincerely,



Linda M. Murphy, Director  
Office of Ecosystem Protection

cc: Glenn Haas, MassDEP  
Kevin Brander, MassDEP  
Marcia Sherman, MassDEP  
Vernon Lang, USFWS  
Mary Colligan, NOAA  
Peter Colosi, NOAA  
Gregory Stapleton, EPA SSB

